

BWSR updating Wetland Conservation Act rules to reflect statutory changes



The Minnesota Board of Water and Soil Resources (BWSR) is updating rules for the state's Wetland Conservation Act (WCA) to reflect statutory changes made since the current rule was adopted in 2009.

Wetlands provide many ecological benefits, such as improving water quality, storing water on the landscape after flooding, and providing fish and wildlife habitat. In 1991, the Minnesota Legislature passed WCA into law consistent with the public interest to achieve no net loss in the quantity, quality or biological diversity of Minnesota's wetlands. Local governments implement WCA, with oversight from BWSR, by working with landowners to avoid and minimize impacts to wetlands, and by replacing wetlands impacted by development with wetlands of equal or greater function and value.

WCA is a state law that operates independently of federal water and wetland protection programs. The Legislature has passed numerous amendments to WCA, and associated WCA rules have undergone multiple revisions since 1994. The current rules were adopted in 2009. Since then, statutory changes were made to WCA in 2011, 2012, 2015, 2017 and 2024. The current rulemaking process

aims to reconcile WCA rules with the statutory changes.

The 2024 WCA statutory amendments were made primarily to help fill regulatory gaps for federally unregulated waters following a Supreme Court of the United States case (*Sackett v. EPA*), which diminished federal protections. These changes include revisions to exemptions, a new wetland typing system, and additional authority over deepwater habitats and certain stream reaches. Details about these changes are [available on BWSR's website](#).

"WCA plays a key role in conserving Minnesota's wetlands and replacing wetlands when impacts are unavoidable," said Les Lemm, BWSR wetlands section manager. "This rulemaking process will help ensure that statutory changes and rules align, which will in turn help streamline associated regulatory activities."

Rulemaking in Minnesota follows procedures outlined in the Minnesota Administrative Procedure Act, Minnesota Statutes, Chapter 14. BWSR staff use the [Minnesota Rulemaking Manual](#) as a procedural guide for WCA rulemaking.

BWSR staff identified several guiding principles for this rulemaking process.

Wetlands such as those pictured in Redwood County (left), Freeborn County (center) and Anoka County (right) offer multiple benefits including water storage, improved water quality and enhanced fish and wildlife habitat. Minnesota's Wetland Conservation Act was passed in 1991 to ensure no net loss in the quantity, quality or biological diversity of the state's wetlands.
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— Les Lemm, BWSR wetlands section manager

According to these principles, rule changes should have tangible results or outcomes, improve accountability, minimize negative impacts to local government staff workloads, balance public costs and benefits, and provide fairness and consistency.

The process to amend the WCA rules included a request for comments published in the State Register, which closed on March 19, 2022. BWSR published another request for comments in the State Register this summer that expanded the scope of

rulemaking to include the 2024 statute changes. Comments on this proposal were accepted through Aug. 12.

Before beginning the process of writing the draft rules, BWSR staff sought stakeholder input on various potential rule topics. BWSR also established a Wetlands Advisory Committee comprised of representatives from organizations that have a significant interest in WCA rules and proposed changes. This committee does not have voting or decision-making authority

but will advise BWSR staff on rulemaking drafts as they are produced.

BWSR will also initiate consultation and cooperation with each of the 11 federally recognized Tribal Nations that share geography with Minnesota, seeking tribal input on the development of the proposed rule changes.

“We want to make sure that interested individuals and organizations that will be impacted by these changes have the opportunity to review the draft rules and provide comments during

the rulemaking process,” Lemm said.

BWSR aims to finalize draft rules late this fall. Following BWSR Board approval, the draft rules will be published in the State Register with a call for public comments. Legislative hearings may be required depending on the number of responses received during the public comment period. According to Lemm, the current goal is to finalize and adopt the rules by summer 2025.

Learn more about [WCA rulemaking](#).